

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HENRY C. ROSENAU,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C13-1997 MJP

ORDER DENYING CERTIFICATE
OF APPEALABILITY

This Court denied Petitioner's 2255 Motion to Vacate his sentence on April 25, 2014. (Dkt. No. 10.) Petitioner filed a Notice of Appeal on May 12, 2014. (Dkt. No. 11.)

The case is back before this Court on a remand from the Ninth Circuit Court of Appeals "for the limited purpose of granting or denying a certificate of appealability at the court's earliest convenience." (Dkt. No. 12.) Following a review of the pleadings and record in the above-entitled matter,

IT IS ORDERED that a certificate of appeal is DENIED.

The standard for granting a certificate of appealability (COA) is articulated at 28 U.S.C. § 2253: "[A] certificate of appealability may issue . . . only if the applicant has made a

1 substantial showing of the denial of a constitutional right.” The threshold for that showing has
2 been defined as the point at which “jurists of reason could disagree” with the court’s order or at
3 which the issues presented “are adequate to deserve encouragement to proceed further.” Miller-
4 El v. Cockrell, 537 U.S. 322, 327 (2003).

5 Petitioner has not made a substantial showing of the denial of a constitutional right
6 because Alleyne is clearly inapplicable to the Court’s consideration of sentencing enhancements
7 that did not affect a mandatory minimum sentence, and Petitioner’s counsel did not render
8 ineffective assistance merely by failing to raise the issue. Similarly, Petitioner’s counsel did not
9 render ineffective assistance by failing to raise the rule of specialty—which would not have
10 applied to the Court’s consideration of conduct relevant to the charge for which Canada agreed
11 to extradite Petitioner. Finally, Petitioner has failed to show that reasonable jurists could disagree
12 that the Government breached the plea agreement by failing to recommend a treaty transfer
13 where the plea agreement expressly bound only the United States Attorney’s Office for the
14 Western District of Washington and not the larger Department of Justice.

15 The Court declines to issue a certificate of appealability in this matter.

16 The clerk is ordered to provide copies of this order to Petitioner and all counsel.

17 Dated this 3rd day of June, 2014.

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21 Marsha J. Pechman
22 Chief United States District Judge
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